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10/24/89

SEP 14 1989

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information provided indicates that you were incorporated under the laws of [REDACTED] on [REDACTED]... Your purpose, as stated in your Articles of Incorporation, is "to protect the civil liberties and property rights of the citizens of [REDACTED], especially in regard to the construction and use of the [REDACTED]." An amendment to your Articles of Incorporation dated [REDACTED], provides that upon dissolution all assets shall be distributed to other nonprofit land use organizations as designated by the Board of Directors.

You were formed when members of your community became aware of possible zoning and building violations at the construction site of [REDACTED] in [REDACTED]. In order to protect the residential qualities of the community, you seek to implement "responsive and effective community participation to protect the civil liberties and property rights of the neighborhood." Your primary goal is "to seek a legal remedy for the defects in construction and misuse of property that are evident at the site." To date, members of your organization have testified at public hearings regarding their concerns. In addition, a law suit has been filed against the [REDACTED], the City and County of [REDACTED], [REDACTED], and various individuals asking the Circuit Court of the [REDACTED] in the State of [REDACTED] for declaratory and injunctive relief and damages based on various causes of action. These causes of action include alleged violations of the Zoning Code, Land Use Ordinance, and Building Code, as well as nuisance, bad faith, and fraud.

Proposed budgets submitted with your application indicate that your financial support will be derived from contributions from the general public. Your primary expenditures will be for legal fees associated with the activities described above.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b) of the regulations provides that an organization is "organized exclusively" for exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and dedicate the assets of such organization to an exempt purpose upon dissolution.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to defend human and civil rights secured by law.

Rev. Rul. 69-161, 1969-1 C.B. 149, describes a legal aid society and holds that an organization that provides "for legal services to indigent persons otherwise financially incapable of obtaining such services" is exempt under section 501(c)(3) of the Code.

Rev. Rul. 73-285, 1973-2 C.B. 174, holds that an organization that provides funds to defend members of a religious sect in legal actions involving substantial constitutional issues of state abridgement of religious freedom is exempt under

section 501(c)(3) of the Code.

Rev. Rul. 75-74, 1975-1 C.B. 152, holds that a public interest law firm that provides representation in cases it selects as having significant public interest and for which representation by traditional private law firms is not economically feasible is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 80-278, 1980-2 C.B. 175, holds that an organization organized for the purpose of protecting and restoring environmental quality by instituting litigation as a party plaintiff under federal and state legislation qualifies for exemption under section 501(c)(3) of the Code.

In Retired Teachers Legal Defense Fund, Inc. v. Commissioner, 76 T.C. 280 (1982), the petitioner was organized to protect the financial stability of the New York City Teachers' Retirement System and the contributions and pensions of retiree members of that system. The organization brought suit on behalf of approximately 25,000 retired teachers and sought to secure restitution of a alleged \$204 million loss of the system's assets. The Court found that the petitioner's litigation was comparable to a stockholder's derivative suit designed to benefit directly the private property interests of a relatively small segment of the public. The petitioner was held to be not entitled to exemption as an organization described in section 501(c)(3).

Since your Articles of Incorporation do not limit your purposes to exempt purposes within the meaning of section 501(c)(3) and do not provide for a proper distribution of your assets upon dissolution, you do not meet the "organizational test" for exemption under section 501(c)(3). For the reasons stated below, you also do not meet the "operational test" for exemption under that section.

The Rev. Ruls. cited above illustrate the basic types of litigating organizations that have been recognized as exempt under section 501(c)(3) of the Code: (1) legal aid organizations; (2) human and civil rights defense organizations; (3) public interest law firms; and (4) organizations that attempt to achieve charitable goals through the institution of litigation as a plaintiff. Such organizations have been determined to serve a public rather than private interest as required by Reg. 1.501(c)(3)-1(d)(1).

The information submitted with your application suggests that you were formed by a group of neighborhood residents to

combat, through litigation and other means, a perceived threat to the residential character of your neighborhood. Although membership in your organization is open to the general public, we note that [REDACTED] of your [REDACTED] officers live on the same street. These individuals have a private property interest in the outcome of the litigation you have instituted in light of their ownership of real property or residency in the neighborhood. Further, their standing to bring such litigation is derived from these private property interests rather than from "human and civil rights secured by law." The fact that your creators are actively financing the litigation and have contributed from "\$[REDACTED] to \$[REDACTED] per household to this effort" and that your primary fund-raising appeals are directed at "the neighbors of [REDACTED]" are additional indications that the litigation will not have a substantial impact beyond those in the immediate vicinity of [REDACTED] and, therefore, that you are serving private interests.

There is no evidence that the case you have chosen to litigate was selected by a board or committee that is representative of the public, as would be the case if you were a public interest law firm. There is no evidence that the individuals on whose behalf such litigation has been brought are indigent persons, otherwise financially incapable of obtaining such services, as would be the case if you were a legal aid society. There is no evidence that you will be protecting or restoring the environment by enforcing state or federal legislation.

Accordingly, you do not qualify for recognition of exemption from federal income tax under section 501(c)(3) of the Code.

You are required to file federal income tax returns. Contributions to you are not deductible under sections 170(c)(2), 2055, 2106, or 2522 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted in duplicate within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section

[REDACTED]

7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If you direct further correspondence to us concerning this matter, please include the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case but rather to its location.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the key District Director in Los Angeles, California. Thereafter, if you have any questions about your federal income tax status, please contact your key District Director. The appropriate State officials will be notified of this action in accordance with Code section 6104(c).

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch 2

cc: [REDACTED]

cc: State Officials of [REDACTED]

[REDACTED] 9-14-89

[REDACTED] 9-14-89